

**National Advisory Council
For Environmental Policy and Technology**

May 6, 2004

Administrator Michael O. Leavitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Leavitt:

On behalf of the National Advisory Council for Environmental Policy and Technology, I am pleased to forward the Final Report of NACEPT's Superfund Subcommittee.

We are grateful to Subcommittee members for working on this report. Their long labor and expertise are apparent in the document, as are their diverse and deeply-held opinions about the Superfund Program. NACEPT concurs with the seventeen recommendations advanced by the Subcommittee.

Beyond the consensus recommendations, the document raises a number of concerns regarding Superfund and its future. NACEPT is respectful of Subcommittee discourse upon these matters. However, in keeping with its purpose, NACEPT offers the following comments.

Hazard Ranking System: EPA must have a rational basis for allocating limited Superfund resources. NACEPT understands that risk evaluation is imperfect and, therefore, vulnerable to distortion. However, to paraphrase Winston Churchill regarding the shortcomings of democracy: risk assessment is the worst way to allocate resources, except for all others. NACEPT views risk assessment, supplemented by relevant qualitative considerations as the most effective tool for evaluating and addressing environmental concerns. Toward that end, we urge EPA to periodically review the Hazard Ranking System. Its usefulness and the confidence it inspires are essential to Superfund success.

Adequacy of Funding: NACEPT strongly agrees with the Subcommittee's consensus view that the Superfund program should have sufficient resources to fulfill its responsibility of protecting human health and the environment and spend more, rather than less, money on work directly improving public health and environmental conditions at NPL sites. At a minimum, where contamination is caused through neglect or non-compliance, the responsible parties should be held fully liable for all regulatory and

remedial costs. At the same time, it is critical that the federal government secure adequate funding for remediation at sites where no viable responsible parties can be found.

NPL Listing and Resource Availability: The Subcommittee debated whether the availability of funding should be a criterion for inclusion or exclusion of sites on the NPL. NACEPT believes that the ranking and listing of hazardous sites, including megasites, should be independent of funding considerations. An environmental liability does not cease to exist in the absence of remedial resources. Indeed, the recognition of such liabilities should drive resource allocation, not the other way around.

Use of Superfund Resources: Some Subcommittee members perceived inefficiencies and waste in the Superfund program. NACEPT has not conducted a performance review of the program, nor has it evaluated Superfund aversion as a compelling factor in voluntary PRP clean-up efforts. The Council does, however, recognize that superior management and continued resource availability go hand in hand. We recommend that EPA review complaints as to waste and inefficiency in Superfund and all its programs, and take appropriate action when and where such problems are found.

Measures of Success: Reporting of progress on individual sites should, in principle, be made as a measure of the reduction of risks that the sites embody. Although it is a difficult task, efforts should be made to develop such measures where possible. Work on the sites should also be defined in advance, in terms of sequential stages, interim and final measures of success, so that remedial progress can be measured and evaluated.

In closing, NACEPT commends the EPA for establishing the Superfund Subcommittee, and thanks the Subcommittee for its report. To the extent that the Subcommittee has highlighted problems facing Superfund and set EPA on a course toward strengthening the program, it has provided a valuable service to the Agency.

There may be some temptation to view the Subcommittee's pervasive lack of consensus as indicative of an unsuccessful effort. NACEPT believes the experience of this Subcommittee yields a more complex truth. To the credit of the convening authority, the Superfund Subcommittee represents a broad range of interests and perceptions. Diversity has led to a deeper understanding of Superfund and how it is perceived: but diversity has also revealed that full consensus on Superfund is highly improbable, if not impossible. The Agency must now integrate the Subcommittee's findings and move ahead in its work on implementation of the Superfund program. It must not allow itself to become paralyzed trying to realize a full consensus that simply does not exist.

We would like to acknowledge that written comments were submitted to NACEPT by the American Chemistry Council, the Superfund Settlements Project, the National Sediments Coalition, the National Association of Manufacturers, and Vicky Peters. Oral comments were provided to the Council by Vicky Peters and Patricia Casano.

On behalf of the NACEPT Council, we appreciate the opportunity to offer our comments to EPA and we look forward to receiving a response.

Sincerely,

Dorothy Bowers, Chair
National Advisory Council for
Environmental Policy and Technology

Attachment

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